

**ZONING BOARD OF APPEALS
TRURO, MASSACHUSETTS
- MINUTES -
MONDAY, APRIL 23, 2007
TRURO TOWN HALL, 7 PM**

QUORUM PRESENT: N. Pope (Chmn.); A. Hultin (Vice Chmn); K. Althaus (Clerk); M. Matricardi; J. Allee; A. Efromson, (Alt.). S. Kelly, Recording Sec.

Regular Meeting called to order at 7 P.M. by Chairman Pope, who entered into the record the fact that for the applicable hearings scheduled for this meeting, the list of abutters to be notified had been verified by the Assessors, and all the abutters listed were duly notified in writing. In addition, the meeting was duly advertised in "The Cape Codder" for two weeks preceding the public hearing. It is noted by the Board written reports, where applicable, of the Building Commissioner are entered into the minutes by reference.

Other Business:

- Minutes of March 26, 2007 were approved as written on a Motion by Mr. Pope, 2nd by Mr. Althaus (6/0), unanimous.
- Mr. Pope noted a previous appeal which had been in favor of the ZBA was "remanded" for clarification of findings; this would be at the May meeting. He added, he believed the relevant Special Permit had never been filed.

7:15 P.M. – Continuation -- Seaside Inn on CC Bay, Inc., by atty/agt Lester J. Murphy, Jr., for property located at 482 Shore Rd., (Atlas Sheet 8, Parcel 25)(2007-004/ZBA). Applicant is seeking a Special Permit pursuant to Sec. 30.7.A., to alter and extend a pre-existing, non-conforming motel and cottage structures, known as A Seaside Inn on Cape Cod Bay, per plans filed with the ZBA (ref. "Proposed Site Plan prepared for Mr. Harry Miller" prepared by Pesce Engineering & Assoc., of 1/20/07, and plans of 12/20/06 (T-1; A-1;A-2;A-3;A-4 and plans of 11/21/06 A-3;A-10 by GS Design Group Inc.), as continued from the Hearing of March 26, 2007. Mr. Pope explained he had asked former building inspector Williams provide background on the interpretation of height regulations and the reference to the mid-point of each wall and the grade on top of the foundation. Mr. Wingard spoke about the finish ground level, and noted the Seaside Inn proposal maintained the existing roof ridge.

Prior to continuing discussion, Atty. Murphy asked for comment on the request of an extension of action on the Special Permit: **(Request for extension for exercise of 5/22/06 Special Permit (filed w. town clerk 5/30/06) to Seaside Inn on CC Bay, Inc., by atty/agt Lester J. Murphy, Jr.,** for property located at 471 & 482 Shore Rd. (Atlas Sheet 8, Parcels 7&25). Atty. Murphy continued, this was the same footprint as that of the May 2006 Condominium Conversion and interior changes request and they were simply asking for an extension. Since there were no further questions, the following Motion was made:

Motion (Hultin; 2nd Allee): Move to grant a six-month extension to Harry Miller/Seaside Village/A Seaside Inn on Cape Cod Bay, Inc., for property located at 471 & 482 Shore Rd (Atlas Sheet 39, Parcels 7&25)(ref: 2006-0010/ZBA) w/ref. to Sec. 40.3 of the zoning bylaw in order to convert A Seaside Inn on Cape Cod Bay to a condominium form of ownership and with interior changes, and with reference to the Special Permit approved May 22, 2006, filed May 30, 2006 (ref to Registry of Deeds "Bk 21129 Pg 228 #40567" filing 6/26/06). Said extension on the Condominium Conversion is for six months from the expiration date of May 30, 2007.

Voted in Favor: Althaus; Pope; Hultin; Matricardi; Allee. Voted Against: None. Motion Carries: 5/Yes; 0/No, Unanimous.

Discussion resumed on the Seaside Inn continuation; Atty. Murphy explained the cupolas discussed previously were simply a design feature -- there was no access to them. He reviewed the sideline setbacks which would be approximately 10 ft. on one side and 12 feet on the other; furthermore, the structure would be further from the water side as well. He said all setbacks will be in total conformity whereas before, they were all in non-conformity. In regard to the questions raised about the roof, Atty. Murphy said the ridge is at approximately 23 ft. as it currently exists. The cupolas were at or below 30 ft.

Planning Board member Worthington noted a final Site Plan Review request would be submitted to the Planning Board after the ZBA action; Mr. Althaus said the plans looked better than the previous rendition, and Mr. Hultin added, clearly, there was a substantial reduction from the previous proposal. The following Motion was made:

Motion (Hultin; 2nd Pope): Move to approve a Special Permit for property located at 482 Shore Rd., (Atlas Sheet 8, Parcel 25)(2007-004/ZBA) to alter and extend a pre-existing, nonconforming motel and cottage

structures, known as A Seaside Inn on Cape Cod Bay, as per plans submitted to the ZBA (with reference to "Proposed Site Plan prepared for Mr. Harry Miller" by Pesce Engineering & Assoc., of 1/20/07 and plans of 12/20/06 and ref. to A-1; A-2;/GS Design Group, Inc.) and with reference to elevations of said 12/20/06 "A-4" plan revised and submitted to the ZBA 4/23/07 which shows the ridge height of 23.17 ft.

The ZBA Conditions said Permit: 1) the sideline setbacks of 12.9'± and 11.29'± shall be maintained for clearance as shown on site plan for emergency vehicle access; 2) no areas dedicated for exclusive use other than the proposed deck egress structures (w/reference to the Condominium Conversion of May 22, 2006): "except for the decks and patios as shown on plan, no exclusive areas shall be established between the existing motel building and Cape Cod Bay."

The ZBA Finds said Special Permit is in keeping with the intent of the bylaw and not more detrimental to the neighborhood.

Voted in Favor: Althaus; Pope; Hultin; Matricardi; Allee. Voted Against: None. Motion Carries: 5/Yes; 0/No, Unanimous.

7:30 P.M. -- Leah Camhi, by agt Jacob Walters, for property located at 37 Pond Rd., (Atlas Sheet 36, Parcel 53)(2007-007/ZBA). Applicant is seeking a Special Permit w/reference to Sec. 30.7.A and 50.1 A of the Zoning Bylaw to demolition and rebuild accessory structure of approx. 10'x14' on existing footprint, which is located on the rear property line, as per plans filed with the Building Inspector and ZBA. Ms. Camhi explained the existing shed is falling down, and she wanted to rebuild it on within the property line. Mr. Pope asked how it got built on the property line; it was pre-existing, Ms. Camhi explained it would cost a lot to rebuild further into her property. Mr. Althaus noted it seemed the structure could be torn down and situated closer into her property. It was explained a backyard had been created and she wished to use the shed for storage. It was noted part of abutter Gonsalves' driveway was on her property and members asked if there were any easement for the driveway and shed; there was not at the present time. After further discussion, the following Motion was made:

Motion (Hultin; 2nd Efromson): Move to approve a Special Permit for Leah Camhi, for property located at 37 Pond Rd., (Atlas Sheet 36, Parcel 53)(2007-007/ZBA) demolish/relocate a non-conforming structure(shed) of approx. 12x16', provided said structure will be located totally on the owner's property.

The ZBA Finds said Special Permit is in keeping with the intent of the bylaw and not more detrimental to the neighborhood.

Voted in Favor: Althaus, Hultin, Matricardi, Allee, Efromson. Voted Against: None. Motion Carries: 5/Yes; 0/No, Unanimous.

7:45 P.M. -- A. Venezia, D. Morris, R. Samms, M. Scharrenbroich, by atty/agt David S. Reid, are appealing the decision of the Truro Building Commissioner for failure or refusal to make zoning enforcement/determination and issuance of Change of use permit (07-39X) to John Rice for property located at 6 Professional Heights, (Atlas Sheet 36, Parcel 138)(2007-008/ZBA), which is in violation of Zoning Bylaw (ref. Sec. 30.2).

Mr. Pope explained Ms. Matricardi's question on potential conflict; she was advised to declare and proceed; this was done and Mr. Pope said all regular members would be voting; Mr. Efromson would not be voting.

Atty. Reid proceeded with a chain of action on the property. Professional Heights was subdivided in 1971 (Woodward Subdiv.) Lot 8 was shown on the plan; lot 7 remained vacant; in 2004 the lots were sold by Alexander to Rice; in 2005 a business condominium was filed; in August of 2005 Unit 1 was sold and Unit 2 remained in the Rice ownership on Lot 7. Pictures were shown from 2001 and 2005 which showed the difference in the area from 2001 to 2005. A formal complaint had been made to Building Commissioner Wingard in January 2006, and in June 2006 Preliminary Site Plan Review was filed to the Planning Board. It was noted one cannot access commercial use through the private road of the residential area. Mr. Reid continued, Mr. Rice was granted a Temporary Change of Permit from "Residential" to "Residential-Retail Service" and he contended the use was not allowed; he added there was no access through the private way to something not allowed in the residential district, and the site had been reconfigured to accommodate Mr. Rice. Mr. Reid said he had submitted letters of complaint from the neighbors to the ZBA members, as well, and continued, there was nothing in the Zoning Bylaw referencing contractor's storage there, and with reference to Sec. 30.2, and said, this lack of listing that use serves to "disallow" the use ["Uses not expressly permitted are deemed prohibited."]. In regard to the Planning Board Site Plan Review, there was no previous reference to retail use – there were no customers, and no retail-type use. He provided background on the property and referenced a letter from Zisson & Veara which addressed merged lot issue. He concluded, the Site Plan endorsement should be in place and he felt there was no justification

for a temporary change of use permit, thus the decision of the Building Commissioner was being appealed. Mr. Wingard spoke and said when the Site Plan Review issue was brought to his attention, he did not issue a "Cease and Desist" order, because he believed the use was allowed. In response to a question about Professional Heights, he explained the lots in question – 7 and 8 are totally in the General Business District. Mr. Hultin asked what is permitted in the Use Table? The answer was a retail service – "Retail or Wholesale Business Service." Members discussed the definition of retail. Atty. Murphy, representative for Mr. Rice, said that use refers to retail or wholesale business, and he spoke about businesses in the Highland Road area which have identical uses, such as excavating, etc.

Mr. Wingard said the issue of access is not identical to Highland Road, in that travel on the road (at Professional Heights) uphill is through an all-residential area, and this access road issue needed to be resolved. Mr. Murphy said Mr. Rice had applied for a Curb Cut from the State, but he could not meet the required radius; however he had since entered into a Purchase & Sale on the Conlon property and would be re-requesting a curb cut. He added there is no provision in zoning regarding more than one principal use on a property, and he mentioned properties in Truro Center which have more than one use. In response to a question about the sfr and condominium unit; it was explained for zoning purposes the lots have merged.

Mr. Rice spoke and said he wanted to put his business on that site; he assumed it was a general business use, and he needed a place to put the construction part of his business. Mr. Pope asked Planning Board member Worthington if Mr. Rice received the requested curb cut on Rte. 6, whether the Planning Board found a solution to "mollify" the neighbors. Mr. Worthington said he could not speak for the Planning Board, but as he understood it, the Planning Board would be more amenable to screening. Mr. Murphy said Felco Engineering had been contacted regarding an acoustic barrier. Abutters spoke next. Mr. LeDuc said he had been trying to get a fence installed to keep the dust down; his house gets shaken from the heavy equipment, and he did not feel this was a "benign" use. He said trucks have to "barrel up" the hill because of the grade. Mr. Reid noted the only thing on that site when it was purchased was single-family residential properties, and he felt this was not the proper use of this property. Abutter Scharrenbroich spoke against the project, and Mr. Althaus said he thought originally the area had been designed as a residential and professional area (dentist, doctor's office, etc.). It was explained that one could not commercially access via Professional Heights Road. Mr. Reid said access is part of the use. Members discussed procedure of appealing the building commissioner's decision, the allowance of access, uses of the property, use tables, and the intent of the bylaw. Mr. Pope said he did not think there was any minor operation – this was major a construction business. Mr. Althaus mentioned the historical use had seemed to be for professional offices, and he was troubled by the "evolution" to general industrial use. Mr. Pope said he felt this was full-scale industrial use. Abutter Morris said this is as much of a construction site as he had ever seen; it was noted seven households were objecting to the use. Mr. Hultin spoke about the LCPC which had made an effort to coordinate the "village" concept in N. Truro. Members discussed their decision: uphold; reverse; continue.

The following Motion was made:

Motion (Pope; 2nd Althaus): In the matter of A. Venezia, D. Morris, R. Samms, M. Scharrenbroich appealing the decision of the Truro Building Commissioner for failure or refusal to make zoning enforcement/determination and issuance of Change of Use Permit (07-39X) to John Rice for property located at 6 Professional Heights, (Atlas Sheet 36, Parcel 138)(2007-008/ZBA), which is in violation of the Zoning Bylaw (ref. Sec. 30.2), the ZBA votes to overturn the Decision of the Building Commissioner, and Finds that a Special Permit is required for use of the property as a construction yard. The Board directs the Building Commissioner (Zoning Enforcement Officer) to issue a "Cease and Desist" Order, and further orders that all construction equipment shall be removed from the site within 30 days (of April 23, 2007).

Voted in Favor (of overturning the Building Commissioner's decision): Hultin, Matricardi, Allee, Pope, Althaus; Voted Against: None. Motion Carries 5/Yes; 0/No. Unanimous.

8:00 P.M. -- John R. Riemer, for property located at 7 Fisher Rd., (Atlas Sheet 54, Parcel 26)(2007-009/ZBA). Applicant is seeking a Special Permit w/reference to Sec. 30.2 and 40.1 of the Zoning Bylaw, in order to construct a three-bay garage with a 600 sq. ft., apartment above, detached, as per plans filed with the Building Inspector and ZBA. Mr. Riemer was present to explain the petition and said he had purchased the property in 1979; he wished to construct the garage with the area above the garage for an apartment; he would be converting the septic system as well. He was seeking a Special Permit for his mother and mother-in-law; area in the main house was 1500 sq. ft., and there were two bedrooms in the main house. Mr. Pope said they had received letters both in favor and

against the proposal, and he asked about the basement apartment one of the abutters had mentioned. Mr. Riemer said there was a separate kitchen in the basement. Letters were read from neighbors Monteith, Rolnick, Trafton, Wilson, R&S Boleyn, G&G Becker, M&P Mather, and S. Kadar. A question was raised about the second floor space, and Mr. Riemer explained. He added he did not have four bedrooms and explained the basement had a walk-in slider with a small area of living space; he was not currently renting. He outlined the layout of the main house: 1st floor contained the kitchen; dining room; living room; bathroom and bedroom; the 2nd floor was an open space; the basement had a bathroom, a large open room, and a smaller area (mechanical area). He had rented out the basement in the past; however he would not be using the house for any other purpose (ie: basement rental). Mr. Boleyn spoke of concerns with the 3-bay garage. Members then discussed the petition; it was suggested the kitchen be removed from the basement, and members discussed a condition that the apartment would not be rented to the general public. Discussion moved on to the number of bedrooms. Mr. Wingard explained the property would have to be inspected by the Health Agent. It was noted apartments are limited to 600 sq. ft.; one could not use attic space as part of living space; suggestion of removal of gable, and adjustment of roof line. A Motion was made by Mr. Hultin, with a second by Mr. Althaus to grant the Special Permit to John Riemer for an apartment of 600 sq. ft. of maximum habitable space above the garage with Conditions: that the kitchen facilities be removed from the basement of the main house; occupancy of the apartment be limited to immediate family members; the attic is to remain unfinished and uninhabitable. Discussion under the Motion: conditions were discussed; members concurred it might be best to ask for a continuation.

Motion: Efromson, 2nd Hultin: Table the aforementioned Motion. 5/0 Unanimous.

Motion: Efromson; 2nd Hultin: Move to Continue the petition of John Riemer to May 21, 2007 at 7:15 P.M. at Truro Town Hall. 5/0 Unanimous to continue.

Meeting adjourned at 11:15 P.M.